

Application Number 10/697,519  
Response to Office Action mailed June 24, 2008

### **REMARKS**

This amendment is responsive to the Office Action dated June 24, 2008. Applicants have amended claims 1-2, 4-13, 15-22, 35-36, 38-47 and 49-55. Applicants have cancelled claims 3, 14, 37, and 48. Claims 1-2, 4-13, 15-36, 38-47 and 49-66 remain pending. Of those, claims 23-34 and 56-66 are withdrawn. Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

#### **Restriction Under 35 U.S.C. § 121**

In the Office Action, the Examiner restricted claims 1-66 under 35 U.S.C. § 121 as follows:

Genus	Claims 1-11,
Group I	Claims 12-22 and 35-55 and
Group II	Claims 22-34 and 56-66

During a telephonic conversation with the Examiner on June 5, 2008, Applicants provisionally elected Group I without traverse. Applicants hereby affirm this election without traverse.

#### **Claim Rejections Under 35 U.S.C. § 102**

In the Office Action, claims 1-3, 12 and 14 were rejected under 35 U.S.C. § 102(b) as being anticipated by Pure & Natural Diaper Service (www.seattlediaper.com, published 02/02/2002) (hereinafter, "Pure"). Applicants respectfully traverse this rejection to the extent the rejection may be considered applicable to the amended claims. Pure fails to disclose each and every feature of the claimed invention and provides no teaching that would have suggested the desirability of modification to include such features.

In order to support an anticipation rejection under 35 U.S.C. § 102(b), it is well established that a prior art reference must disclose each and every element of a claim. This well known rule of law is commonly referred to as the "all-elements rule." If a prior art reference fails to disclose any element of a claim, rejection under 35 U.S.C. § 102(b) is improper. Applicants respectfully submit that Pure fails to disclose each and every feature recited in claims 1-3, 12 and 14 as amended, as required by 35 U.S.C. § 102(b), and provides no teaching that would have suggested the desirability of modification to include such features.

Application Number 10/697,519  
Response to Office Action mailed June 24, 2008

Applicants' claim 1 as amended, for example, requires that the wares comprise restaurant wares. Pure teaches a method for cleaning diapers. Diapers, however, are not restaurant wares. Restaurant wares may include, for example, eating utensils, plates, pots, pans, and glassware. See, e.g., Applicants' specification, ¶ [0002]. Pure lacks any teaching for a method of cleaning anything other than diapers. Therefore, Pure fails to teach or suggest this requirement of Applicants' claim 1 as amended. Applicants' independent claim 12 includes similar requirements as amended, therefore similar arguments apply to claim 12.

Applicants' claim 1 as amended also requires identifying each of the sets of wares as belonging to an individual one of the plurality of establishments (formerly recited in dependent claim 3). The Office Action cited Pure as teaching this requirement. Applicants respectfully disagree. Pure teaches a diaper rental service in which any of the diapers owned by the service may be delivered to any customer. For example, Pure at page 4 states "Please keep in mind that because we are a rental service ... [i]f you have a large stockpile of clean diapers in your home, other customers cannot use them." Therefore, Pure does not teach or suggest identifying each set of wares as belonging to an individual one of a plurality of establishments as required by Applicant's claim 1 as amended. Independent claim 12 as amended includes similar subject matter for which similar arguments apply.

Moreover, Applicants' claim 1 (and similarly claim 12) as amended requires delivering the set of wares to each respective one of the plurality of establishments in accordance with the identification. As discussed above, Pure does not teach or suggest identifying each of the sets of wares as belonging to an individual one of the plurality of establishments as required by claim 1. In claim 1, only sets of wares identified as belonging to a particular establishment are delivered to that establishment. Thus, a set of wares identified with one establishment will not be delivered to any of the other establishments. In contrast, Pure teaches that its diapers are "fungible" in the sense that they may be freely exchanged or replaced with any other diaper and any diaper may be delivered to any individual. An individual may receive any set of diapers without regard for any identification of the diapers as belonging to that individual, and any one diaper may be delivered to any individual participating in the diaper service. Accordingly, Pure fails to teach delivering the set of wares to each respective one of the plurality of establishments in accordance with the identification as required by Applicants' claims 1 and 12 as amended.

Application Number 10/697,519  
Response to Office Action mailed June 24, 2008

For at least these reasons, the Office Action has failed to establish anticipation of Applicants' independent claims 1 and 12 under 35 U.S.C. § 102(b). Dependent claims 2-3 and 14 incorporate the requirements of the respective independent claims and are patentable for at least the same reasons. Withdrawal of the rejection of claims 1-3, 12 and 13 under 35 U.S.C. § 102(b) as being anticipated by Pure is therefore respectfully requested.

#### Claim Rejections Under 35 U.S.C. § 103

In the Office Action, claims 4-11, 13, 15-22 and 35-55 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pure. Applicants respectfully traverse this rejection to the extent the rejection may be considered applicable to the amended claims. Pure fails to disclose each and every feature of the claimed invention and provides no teaching that would have suggested a rational reason that would have lead a person of ordinary skill in the art to arrive at the claimed invention.

To establish a prima facie case of obvious, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See*, MPEP 706.02(j). Applicants respectfully submit that the Examiner has failed to meet at least this basic criteria required to establish a prima facie case of obviousness. Namely, Pure does not teach or suggest all of the limitations recited in Applicants' claims as required to establish a prima facie case of obviousness under 35 U.S.C. § 103.

As discussed above with respect to the rejections based on 35 U.S.C. § 102(b), Pure does not teach or suggest identifying each set of wares as belonging to an individual one of the plurality of establishments, nor does Pure teach delivering the set of wares to each respective one of the plurality of establishments in accordance with the identification, as recited in Applicants' independent claim 1 as amended and similarly in independent claims 12, 35, and 46 as respectively amended. To meet the Office's initial burden of establishing a prima facie case of obviousness, it is necessary to show "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *See*, e.g., *KSR v. Teleflex*, 127 S. Ct. 1727, 1741, 82 U.S.P.Q.2d 1385 (2007). Because Pure fails to teach or suggest each and every element recited in independent claims 1, 12, 35, and 46 as amended, one of ordinary skill in the art would

Application Number 10/697,519  
Response to Office Action mailed June 24, 2008

have no rational reason to modify the teachings of Pure to include these elements recited in independent claims 1, 12, 35, and 46.

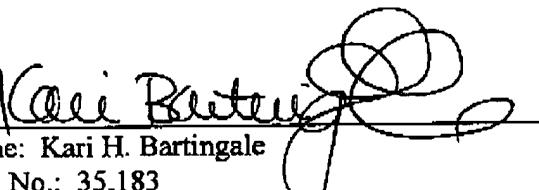
For at least these reasons, the Office Action has failed to establish a *prima facie* case of non-patentability of claims 4–11, 13, 15–22 and 35–55 under 35 U.S.C. § 103(a). Applicants therefore respectfully request withdrawal of these rejections.

### CONCLUSION

All claims in this application are in condition for allowance. Applicants respectfully request reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date: September 24, 2008

By:

  
\_\_\_\_\_  
Name: Kari H. Bartingale

Reg. No.: 35,183

SHUMAKER & SIEFFERT, P.A.  
1625 Radio Drive, Suite 300  
Woodbury, Minnesota 55125  
Telephone: 651.286.8357  
Facsimile: 651.735.1102